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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JENNIFER T. FLORIO,

Plaintiff,

vs.

VISTA PACIFIC HOLDINGS (Investor);
fka HLS ABC-100, LLC., (Investor); BSI
FINANCIAL SERVICES, INC.; fka
SERVIS ONE, INC. (Owner); ARCH BAY
HOLDINGS LLC., (Investor); QUANTUM
SERVICING CORPORATION fka
QUANTUM FINANCING; GREEN TREE
SERVICING LLC fka GREEN TREE
FINANCIAL CORPORATION; ASSET
ACCEPTANCE CAPITAL CORP.
(Investor); OCWEN LOAN SERVICING
LLC. fka OCWEN SERVICING
COMPANY; MORTGAGEIT, INC.,;
SEASIDE TRUSTEE, INC.,;
MORTGAGEIT, INC., DOES 1
THROUGH 100, INCLUSIVE,

Defendants.

Case No.: 2:11-CV-01991-KJD-RJJ

**DEFENDANT GREEN TREE
SERVICING LLC'S
MOTION TO STAY DISCOVERY
PENDING RESOLUTION OF
MOTION TO DISMISS**

Defendant GREEN TREE SERVICING LLC ("Green Tree"), by and through its undersigned counsel, moves this Court for an Order that discovery and the requirements of LR 26-1 and Fed. R. Civ. P. 26(f) be stayed pending resolution of its Motion to Dismiss (Doc. # 43).

Green Tree bases this Motion on the papers and pleadings already on file in this case, the Memorandum of Points and Authorities that follows, and any oral argument this

1 Court chooses to entertain, all of which demonstrate the submittal of a stipulated
 2 discovery plan and scheduling order will be fruitless and/or wasteful until the Court rules
 3 on Green Tree's Motion to Dismiss.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I.**

6 **INTRODUCTION**

7 Green Tree should not be required to conduct discovery on claims that are subject
 8 to its pending Motion to Dismiss because the motion likely will cause the dismissal of
 9 numerous, if not all, of Plaintiff's sixteen spurious claims against Green Tree. The
 10 requirement to meet and confer and, thereafter, actually conduct written discovery and
 11 depositions on these spurious claims would waste both the parties' and this Court's
 12 resources. Instead, this Court should stay the requirements of LR 26-1 and Fed. R. Civ. P.
 13 26(f), so that, if necessary, discovery only will be conducted on those claims that remain
 14 after this Court decides Green Tree's pending Motion to Dismiss.

15 **II.**

16 **RELEVANT FACTS**

17 In June of 2009 – nearly three years ago – Plaintiff admittedly stopped making
 18 payments on her mortgage loan. As a result, Plaintiff's loan spiraled into default, and
 19 non-judicial foreclosure proceedings were initiated by the owner of Plaintiff's loan. On
 20 December 13, 2011, Plaintiff filed her Complaint alleging a laundry list of sixteen claims
 21 against Green Tree and a myriad of others involved in Plaintiff's mortgage loan. *See*
 22 Compl. (Doc. #1). As a result, Green Tree – who is not the lender, beneficiary, trustee,
 23 current holder of the promissory note and deed of trust, foreclosing party, or evicting party
 24 – was forced to file the Motion to Dismiss that currently is pending before this Court. *See*
 25 Motion to Dismiss (Doc. #43). Green Tree's Motion to Dismiss seeks dismissal of
 26 Plaintiff's entire Complaint. *Id.*

27 Given the pending Motion to Dismiss and the likelihood it will be granted, Green
 28 Tree submits that discovery, at this point, would be a waste of the parties' and this Court's

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resources. Accordingly, Green Tree respectfully requests that discovery be stayed until the Court issues a ruling on Green Tree's Motion to Dismiss.

III.

LEGAL ARGUMENT

A. COURTS HAVE BROAD DISCRETION TO STAY DISCOVERY WHEN THE PENDING MOTION TO DISMISS IS DISPOSITIVE OF ALL CLAIMS AND CAN BE DECIDED WITHOUT THE NEED FOR ANY DISCOVERY.

Judges have a great deal of discretion in staying proceedings while dispositive motions are pending. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). Stay of discovery is appropriate when (1) a pending motion is potentially dispositive of the entire case; and (2) where the dispositive motion can be decided without additional discovery. *Pac. Lumber Co. v. Nat'l Union Fire Ins. Co.*, 220 F.R.D. 349, 351-52 (N.D. Cal. 2003) (citing *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1560 (11th Cir. 1985); *Church of Scientology v. IRS*, 991 F.2d 560, 563 (9th Cir. 1993)). Indeed, a stay of discovery pending resolution of a motion to dismiss is appropriate if it appears the opposing party has no chance of prevailing on the motion to dismiss. *See Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (the court may stay discovery when convinced plaintiff cannot state a claim for relief); *Turner Broad. Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997) (same).

B. DISCOVERY SHOULD BE STAYED IN THIS CASE.

Here, both the facts and the law support the entry of an order to stay discovery. First, Green Tree's pending Motion to Dismiss is a dispositive motion directed to each of the sixteen spurious claims asserted in Plaintiff's Complaint. If the Motion is granted, it would render any discovery moot. Second, because Green Tree's Motion to Dismiss is based on Fed. R. Civ. P. 12(b)(6), it can certainly be decided without any discovery being conducted at all.

As such, both prongs outlined in *Pacific Lumber* are met, and this Court may properly, and should, stay discovery pending the outcome of Green Tree's Motion to Dismiss. Accordingly, the discovery requirements of LR 26-1 and Fed. R. Civ. P. 26(f)

1 should be stayed. Green Tree should not be required to expend valuable time and
 2 resources, not to mention incurring attorneys' fees, all to conduct discovery on claims that
 3 will likely be dismissed. Further, a stay of discovery would not prejudice either party, and
 4 would conserve both the parties' and the Court's resources.

5 **IV.**

6 **CONCLUSION**

7 Given that Plaintiff's Complaint fails to state a single claim upon which relief can
 8 be granted, it will be detrimental and burdensome for Green Tree to be required to
 9 conduct discovery and meet ongoing discovery deadlines before the parties know which
 10 of Plaintiff's claims, if any, that this Court deems viable. Should Plaintiff's claims be
 11 dismissed, then discovery will be totally unnecessary. Neither Green Tree nor Plaintiff
 12 should be required to expend the substantial time, effort and money necessary to conduct
 13 expensive discovery until the pleadings have been closed and the parties are actually
 14 aware of what claims, if any, and defenses are being asserted. Given that a stay of
 15 discovery would not prejudice either party, and would conserve the parties' and the
 16 Court's resources, Green Tree respectfully requests that this Court exercise its discretion
 17 and enter an order to stay all discovery in this matter until the Court issues its ruling on
 18 Green Tree's Motion to Dismiss.

19 DATED this 19th day of March, 2012.

20 **FENNEMORE CRAIG, P.C.**

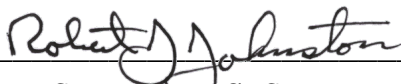
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25 IT IS SO ORDERED.

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UNITED STATES MAGISTRATE JUDGE

28 DATE: MARCH, 26, 2012

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